

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARLENE JOHANSEN,
Plaintiff,
Counterclaim Defendant

v.

UNITED STATES OF AMERICA,
Defendant,
Counterclaim Plaintiff

v.

NATIONAL CITY MORTGAGE CO.,
And TIMOTHY BURKE,
Counterclaim Defendants

RALPH JOHANSEN
Intervenor-Plaintiff

Case No. 04-11789-RCL

COMPLAINT IN INTERVENTION

Preliminary Statement

1. This is an action to quiet title to real estate located at 71 Pleasant Street, Stoneham, Massachusetts ("the property").
2. At issue in this case is whether a federal tax lien to collect the tax liability of Intervenor-plaintiff Ralph Johansen ("Mr. Johansen") attached to the property, which was formerly owned by Mr. Johansen and transferred to Plaintiff Marlene Johansen pursuant to an order of the Massachusetts Probate Court before the notice of federal tax lien was filed.

3. Mr. Johansen seeks a determination that the property is not available to the United States to satisfy Intervenor-plaintiff Ralph Johansen's tax liability.

Jurisdiction

4. This cause of action is based upon 28 U.S.C. § 2410 which provides that the United States may be named as a party in an action to quiet title over property where the United States has a lien. Jurisdiction is provided by 28 U.S.C. § 1340 which provides that the Court shall have original jurisdiction over any civil action for an action arising under any Act of Congress providing for internal revenue and the recovery of any Internal Revenue tax alleged to have been collected without authority.

Parties

5. The Intervenor-plaintiff is Ralph Johansen ("Mr. Johansen"), an individual who resides at 113 St. Botolph Street, Boston, Massachusetts 02115.
6. The defendant and Counterclaim plaintiff is the United States of America.

7. The plaintiff and Counterclaim defendant is Marlene Johansen ("Ms. Johansen"), an individual who resides at 71 Pleasant Street, Stoneham, Massachusetts.
8. National City Mortgage Co. of 3232 Newmark Drive, Miamisburg, Ohio 45342 is a Counterclaim defendant and, upon information and belief, is a corporation.
9. Timothy Burke of 400 Washington Street, Suite 300, Braintree, Massachusetts is a Counterclaim defendant and is an individual.

Factual Allegations

10. On November 29, 1980, Mr. Johansen and Ms. Johansen were married.
11. On March 27, 1984, Mr. Johansen and Ms. Johansen purchased the property located at 71 Pleasant Street, Stoneham, Massachusetts ("the property") as tenants by the entirety.
12. On November 16, 1998, Mr. Johansen filed for divorce from Ms. Johansen in the Massachusetts Probate and Family Court, Case No. 98D4536-DVI.

13. On March 21, 2001, the Honorable Mary Anne Sahagian, Justice of the Massachusetts Probate and Family Court entered a Judgment of Divorce and also ordered that the property be sold. (See copy of Judgment attached hereto as Exhibit 1).
14. After March 21, 2001 and before June, 2001, Ms. Johansen appealed the March 21, 2001 Judgment.
15. On June 7, 2001, Justice Dreben of the Massachusetts Appeals Court issued an order staying that portion of the March 21, 2001 judgment that required the property to be sold until the appeal was determined. (See copy of Appeals Court Order dated June 7, 2001 attached hereto as Exhibit 2).
16. On December 24, 2001, Justice Beverly Weinger Boorstein issued a Modification Judgment in accordance with the agreement of Ms. Johansen and Mr. Johansen. The Modification Judgment required, in part, that (1) Mr. Johansen transfer all of his interest in the property to Ms. Johansen; (2) Ms. Johansen waive her right to Mr. Johansen's pension plan assets; and (3) Mr. Johansen be solely responsible for his federal and

state income tax liabilities. (See copy of Judgment dated December 24, 2001 attached hereto as Exhibit 3).

17. On December 31, 2001, Ms. Johansen dismissed her appeal of the divorce judgment. (See copy of Stipulation of Dismissal dated December 31, 2001 attached hereto as Exhibit 4).
18. On January 8, 2002, Ralph Johansen, through Attorney Phyllis Kolman, delivered an executed deed for all of his interest in the property to Ms. Johansen.
19. On December 11, 2002, a quitclaim deed transferring all of Mr. Johansen's interest in the property to Ms. Johansen was recorded at the Registry of Deeds for Southern Middlesex County, Massachusetts. (See copy of deed recorded December 11, 2002 attached hereto as Exhibit 5).
20. On December 18, 2002, the United States recorded a notice of federal tax lien against Mr. Johansen at the Registry of Deeds for Southern Middlesex County, Massachusetts. (See copy of Notice of Federal Tax Lien recorded attached hereto as Exhibit 6).

21. On or about March 26, 2003, Mr. Johansen filed an Offer in Compromise, Form 656, with the United States through the Internal Revenue Service on the basis of doubt as to collectibility for tax years 1995 through 2000 in the amount of \$48,750. (See copy of Offer in Compromise attached hereto as Exhibit 7).
22. On January 21, 2004, the United States recorded a notice of federal tax lien against Ms. Johansen as nominee of Mr. Johansen at the Registry of Deeds for Southern Middlesex County, Massachusetts.
23. On June 15, 2004, the United States, through the Internal Revenue Service, rejected Mr. Johansen's Offer in Compromise on the basis that the federal tax lien attached to the property and, therefore, the amount offered by Mr. Johansen was insufficient. (See copy of letter dated June 15, 2004 attached hereto as Exhibit 8).
24. On August 26, 2004, Ms. Johansen filed a Complaint for Civil Contempt against Mr. Johansen in the Massachusetts Probate and Family Court for his

"failure to resolve/pay the tax liability for said year. In addition, [Mr. Johansen] has failed to indemnify and defend [Ms. Johansen] from claims asserted against her by the IRS . . ." (See Complaint for Civil Contempt, attached hereto as Exhibit 9).

First Claim For Relief: Quiet Title

25. Mr. Johansen restates and incorporates herein by reference all preceding paragraphs of this Complaint in Intervention.
26. Mr. Johansen transferred his interest in the property before the United States recorded a notice of federal tax lien against Mr. Johansen.
27. The tax lien of the United States did not attach to the property because Ms. Johansen was a purchaser and/or a judgment lien creditor, as defined by I.R.C. § 6323, who took the property before a notice of federal tax lien was recorded against Mr. Johansen so that her interest defeats the interest of the United States and the United States does not have an interest in the property.

28. The tax lien of the United States did not attach to the property and the United States does not have an interest in the property that would make the property available to the United States to satisfy Intervenor-Plaintiff, Ralph Johansen's tax liability.

WHEREFORE, Intervenor-Plaintiff, Ralph Johansen requests that this honorable Court enter an Order determining (1) the United States has no interest in the real property located at 71 Pleasant Street, Stoneham, Massachusetts; (2) Intervenor-Plaintiff, Ralph Johansen is entitled to an award attorneys fees and costs; and (3) any other relief deemed appropriate by this Honorable Court.

Intervenor-Plaintiff Ralph Johansen hereby requests trial by jury on claims to which he is entitled to a trial by jury.

Intervenor-Plaintiff, Ralph
Johansen
By his Attorney,

D. Sean McMahon, Esq.
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CERTIFICATE OF SERVICE

I, D. Sean McMahon, Esq. hereby certify that on December 13, 2004 I served a copy of the foregoing document upon Timothy J. Burke, Counsel for Marlene Johansen, Plaintiff, Counterclaim Defendant; Stephen J. Turanchik, Esq., Counsel for the United States of America, Defendant, Counterclaim Plaintiff; and National City Mortgage Co. by first class mail addressed to the following:

Timothy J. Burke, Esq.
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D. Sean McMahon, Esq.